

2005

Robert D. Irvine, an individual v. Sharon Craig
Anderson and Colleen Craig Anderson,
individuals: Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS
STATE OF UTAH

ROBERT D. IRVINE, an individual,

Plaintiff and Appellee,

v.

SHARON CRAIG ANDERSON and
COLLEEN CRAIG ERICKSON,
individuals,

Defendants and Appellants.

Appellate Case No. 20050138-CA

REPLY BRIEF OF APPELLANTS

Appeal from Judgment Entered December 6, 2004, by the Honorable Timothy R. Hanson
of the Third Judicial District Court, Salt Lake County, State of Utah

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UTAH APPELLATE COURTS

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ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT THE 1981 DEED CREATED BOTH AN EXCLUSIVE LIFE ESTATE AND A JOINT TENANCY INTEREST IN THE GRANTOR.

Appellants have asserted that the 1981 Deed could not simultaneously create both a life estate and a joint tenancy because these interests are inconsistent and incompatible interests for the reasons set forth in Appellants' principal Brief. Appellants have asked this Court to reconsider the meaning of the 1981 Deed in this light. Construction of the 1981 Deed consistent with the trial court's ruling and findings regarding Ada Craig's intent will result in finding that Ada Craig retained a life estate in the property, with a remainder interest in Appellants.

Appellee Irvine challenges the Appellants' position on four grounds.

A. Standard of Review.

Appellants claim that the standard of review for the 1981 Deed should be for correctness. "Deeds and restrictive covenants are interpreted in the same manner as contracts." Holladay Duplex Mgmt. Co. V. Howells, 47 P.3d 104, 105 (Ut. Ct. App. 2002). "Interpretation of contract terms is a question of law." Canyon Meadows, 2001 UT App 414 at ¶ 7. "We interpret contract terms 'in accordance with their plain and ordinary meaning' within the four corners of the document." (citation and quotations omitted). Panos V. Olsen and Associates Construction, Inc., 2005 UT App 446. In interpreting a deed, "[i]t is the court's duty to construe a deed as it is written, and . . . in the light of its own language and peculiar facts." Hartman v. Potter, 596 P.2d 653, 656 (Utah 1979). The trial court's

determinations of the meaning of the 1981 Deed are questions of law and are to be reviewed for correctness.

Appellee Irvine challenges the standard of review claiming that the interpretation of the 1981 Deed is a question of fact and that the trial court's findings of fact should not be overturned unless clearly erroneous.

Appellants assert that the meaning of the 1981 Deed can be determined through the application of legal principles. Only if the 1981 Deed is ambiguous does the factual issue of the intent of the parties become relevant. In determining the legal meaning of the 1981 Deed, the standard of review is correctness. Appellants have provided a lengthy analysis of the legal meaning of the 1981 Deed in their principal Brief to support their claim that the 1981 Deed created a life estate in Ada Craig with a remainder interest in the Appellants.

Appellants have also addressed the factual issue of Ada Craig's intent as it relates to the 1981 Deed in their principal Brief and is further addressed herein.

Appellee Irvine submitted Findings of Fact and Conclusions of Law to the trial court and these were adopted by the trial court. The Findings of Fact are set forth in 13 numbered paragraphs. Paragraph 1 is neither a finding of fact nor a conclusion of law, but merely a recitation of the issues. Paragraph 2 makes no factual determination but instead is a legal conclusion based on the language of the 1981 Deed. Paragraph 3 is a finding of fact relative to Ada Craig's intent and is addressed elsewhere in this brief. Paragraph 4 is a finding of fact which is not inconsistent with the Appellants' arguments in this appeal. Paragraph 5 is not a finding of fact but is a conclusion of law, which should be reviewed for correctness.

Paragraph 6 is a finding of fact relative to Ada Craig's intent and is addressed elsewhere in this brief. Paragraph 7 is a finding of fact which is not inconsistent with the Appellants' arguments in this appeal. Paragraph 8 is a finding of fact relative to Ada Craig's intent and is addressed elsewhere in this brief. Paragraph 9 is neither a finding of fact nor a conclusion of law, but merely a recitation. Paragraph 10 is not a finding of fact but a conclusion of law, which supports Appellants' argument regarding merger and their right to an accounting. Paragraphs 11 through 13 relate to Ada Craig's competency and are not relevant to this appeal.

Paragraphs 3, 6 and 8 of the Findings of Fact relate to Ada Craig's intent and seem to be the basis on which Appellee Irvine challenges the standard of review. The substance of these findings is addressed in Appellants' principal Brief and if further addressed below.

B. Intent of the Ada Craig.

Appellee Irvine argues for an interpretation of the 1981 Deed based on the express language of the 1981 Deed and Ada Craig's intent.

Construction of the express language of the 1981 Deed must come to the conclusion that the 1981 Deed created a life estate in Ada Craig and a remainder interest in the Appellants for the reasons set forth in the Appellants' principal Brief.

The trial court's Findings of Fact, specifically Paragraphs 3, 6 and 8, purport to be the basis for the legal conclusion that the 1981 Deed created simultaneously both a life estate and a joint tenancy estate.

In Finding of Fact Paragraph 3, the trial court states that “[T]he Court also finds that Ada Craig intended to grant under herself and to her daughters a joint tenancy interest in the property, and addition to her one-third tenancy interest, Craig also intended to grant to herself a life estate in the real property.” (See Findings of Fact p.2 Paragraph 3) Findings of Fact generally have some factual evidentiary basis. In this paragraph we simply see a recitation of the Court’s legal conclusions.

In connection with the execution of the 1981 Deed, Colleen Erickson testified that in 1981 she and Sharon Anderson accompanied their mother, Ada Craig, to meet with an attorney at Utah Legal Services so that their mother could have a deed to the Property prepared. “We went in, went into his office. Mother [Ada Craig], she explained the situation that there were several other siblings and they had all been married back in the ‘50’s, that there was Sharon and I that were taking care of her. We took care of everything for her and she felt like the house should go to Sharon and I.” (Transcript, pp. 17-18, commencing at line 21).

Sharon Anderson’s testimony in connection with the execution of the 1981 Deed is that in 1981 she and Colleen Erickson accompanied their mother, Ada Craig, to a meeting with an attorney at Utah Legal Services so that their mother could have a deed to the property prepared.

Q Okay, and what did your mother explain to the attorney?

A [Sharon] That because Colleen and I had lived with her and stayed with her and looked after all of her needs and everyone else was out of the home, that she wanted to leave the property to Colleen and I.

Q Is there any doubt in your mind that you and Colleen were to receive the complete property?

A [Sharon] Was there a doubt in my mind? No.

Q Okay. So your understanding was that the entire property was to go to you and Colleen?

A [Sharon] Correct.

Q And is that what you understood your mother to explain to the attorney?

A [Sharon] Yes.

Q And is that what you believe the 1981 Deed accomplishes?

A [Sharon] Yes. (Transcript, pp. 102-103, commencing at line 9).

Clearly the most credible evidence as to Ada Craig's intent regarding the 1981 Deed is her contemporaneous statement.

Appellee Irvine's argument for Ada Craig's intent is based solely on her actions and statements in connection with the 1999 Deed, some 18 years after the fact. In interpreting the 1981 Deed, Ada Craig's intent in 1981 is the relevant intent, not her intent at some later date and most certainly not her intent in 1999.

Ada Craig's 1981 intent was affirmed by her actions in connection with the 1996 Will. Colleen Erickson testified that in 1996 she and Sharon Anderson accompanied Ada Craig to

meet with an attorney for purposes of preparing a will for Ada Craig. “She [Ada Craig] explained the situation, that there were other siblings and she felt that they had all three had the Irvine inheritances from that side of the family and she felt like Sharon and I had been living there, looking after her and taking care of everything and that she wanted us to end up with everything and that would have been at our discretion if there was anything that she wanted any of the other family members to have.” (Transcript, pp. 20-21, commencing at line 20).

Sharon Anderson testified that in 1996 she and Colleen Erickson accompanied Ada Craig to meet with an attorney for purposes of preparing a will for Ada Craig.

Q Okay, and at the time that the Will was entered into did your mother express her intent to Mr. Wilkinson?

A [Sharon] Yes.

Q And what was that intent?

A [Sharon] That the property was to be left to Colleen and I and all the personal effects was up to the discretion of Colleen and I what we wanted to do with them.

Q Okay, so as of 1996 it was your mother’s intent that all of her property household and residuary as described in the Will was to go to?

A [Sharon] Colleen and I. (Transcript, pp. 103, commencing at line 10).

In Finding of Fact Paragraph 6, the trial court states that “Ada Craig retained a joint tenancy interest so that if one or both of her daughters predeceased her, a share or all of the

property would return to Craig, and not go to any other family member of the co-owner daughters. She [Ada Craig] was interested in giving the property to her daughters if she died, but was not interested in giving the property to one of her daughters' heirs if a daughter predeceased her. She therefore intended to retain a joint tenancy interest in the property."

(See Findings of Fact p. 3 Paragraph 6) This is clearly an erroneous rationale because it ignores the legalities of a joint tenancy. If one of the daughters had desired to transfer her interest to another family member, she had full legal power to do so and such transfer would sever the joint tenancy as to her interest. Arguing that Ada Craig wanted to retain a joint tenancy interest in the property to prevent this occurrence misses the point.

In Finding of Fact Paragraph 8, the trial court states that "The evidence shows that Ada Craig said she owned the property following the 1981 deed, and also that Colleen Erickson testified that this was a 1/3rd, 1/3rd, 1/3rd ownership relationship between Ada, Colleen Erickson, and Sharon Anderson. Other witnesses who testified for plaintiff [Appellee Irvine] supported this interpretation of Ada Craig's ownership intent."

What exactly did Ada Craig say that she owned? Appellants claim that she owned a life estate. Appellee Irvine claims that she owned a joint tenancy interest plus a life estate. In either case the statement of Ada Craig set forth in this finding is meaningless. And we have seen above what Colleen believed was the intent of her mother, i.e. that the remainder interest go to Colleen and Sharon. From 1981 until approximately 1999 Colleen and Sharon had occupied the home with their mother and it is perfectly reasonable the they felt some current ownership interest in the property.

These findings of fact relating to Ada Craig's intent are erroneous should be overturned by this Court.

C. Joint Tenancy and Life Estate Are Inconsistent Interests.

Appellee Irvine alleges that the simultaneous existence of a life estate and a joint tenancy is countenanced by the law and cites three cases in support of that allegation. U.S. v. Gibbons, 71 F.3d 1496 (10th Cir. 1995); Cole v. Cole, 139 Cal.App.2d 691 (1956); and Hammond v. McArthur, 30 Cal.2d 512 (1947). In each of these cases, the parties took title to the subject property by deed as joint tenants. The parties subsequently altered the joint possessory right of the joint tenancy by contract. This is distinguishable from the simultaneous creation of a joint tenancy and a life estate by deed.

In Gibbons, a husband and wife took title to property as joint tenants. They subsequently divorced and the separation agreement provided that the wife could live in the property during her lifetime, subject to certain conditions, and when she no longer occupied the property it would be sold and the proceeds divided between husband and wife. The Internal Revenue Service obtained a tax judgment against husband and foreclosed on the property. The issue considered by the court was whether the wife was entitled to only 50% of the proceeds as the Internal Revenue Service argued because the property was still owned in joint tenancy or whether she was entitled to the value of her life interest plus 50% of the remaining interest. The court embarks on a lengthy analysis of whether the separation agreement severs the joint tenancy or not. This analysis really misses the point because neither the husband nor wife was deceased so the right of survivorship is irrelevant and if a joint tenancy is severed, the interests simply become tenancy in common. What the court

was really grappling with was the same issue presented here by Appellants, whether a joint tenancy and a life estate can coexist. The court in Gibbons correctly concluded that wife “has a possessory interest in the whole of the property and a remainder interest in one-half.” Gibbons at p. 1500. Thus we see that a joint tenancy and a life estate do not coexist.

In Cole, a husband and wife took title to property as joint tenants. They subsequently divorced and the property settlement agreement provided that husband was entitled to sole possession of the property during his lifetime provided that he not rent or sublet the property and that he not sell, encumber or transfer the property. The foregoing conditions are inconsistent with a life estate and thus we see that husband did not have a life estate but merely a contractual right to possession pursuant to the property settlement agreement. Therefore, while the court held that the joint tenancy continued, it did not coexist with a life estate, but rather the possessory right of the joint tenancy was altered by contract.

In Hammond, aunt conveyed title to herself and niece as joint tenants. Niece subsequently conveyed a life estate to aunt. However, because niece did not own the property in fee, she could only convey her interest for life to aunt. The court held that although the conveyance by a joint tenant of all of his interest in property to a third party works to terminate the joint tenancy, the conveyance of less than all of his interest in the property, as in the conveyance of a life interest to the transferee, does not terminate the joint tenancy. While this analysis arrives at the correct result, it ignores the rules of construction applicable to deeds. When niece conveyed a life estate to aunt, the aunt obtained a life estate, with remainder to niece if she survives and a reversionary interest to aunt if niece doesn’t survive.

D. Analysis of Robinson v. King.

Appellee Irvine challenges Appellants' use of the Robinson case as authority, claiming that the Robinson court used antiquated technicalities.

The Robinson case was decided in 1984. "Ambiguous deeds traditionally have been construed by the courts according to rules of construction, rather than by having juries determine factual questions of intent. The current governing rule is as follows: 'In construing a conveyance executed after January 1, 1968, in which there are inconsistent clauses, the courts shall determine the effect of the instrument on the basis of the intent of the parties as it appears from all of the provisions of the instrument.'" G.S. 39-1.1(a). *Id.* at 770. The deed in question, however, was executed in 1924.

The Robinson court found that "[T]his statute [G.S. 39-1.1 (a)] essentially codifies the Triplett rule of construction. Thus, in holding that Maggie Robinson acquired a life estate, our ruling is consistent with the law to be applied to deeds executed after 1 January 1968, as well as with existing common law and G.S. 39-1." *Id.* at 777.

Appellee Irvine also challenges the Appellants' analysis of the 1981 Deed language using the granting clause and habendum clause distinction. Appellee Irvine claims that the habendum clause, reserving a life estate only to Ada R. Craig, is contradictory and repugnant to the granting clause, granting a joint tenancy interest to Ada R. Craig and the Appellants, and should therefore be disregarded. However, in Robinson, as well as the other cases cited therein, the courts address conveyances of fee interests with limiting life estates without so much as a suggestion that the limiting life estate might be contradictory or repugnant to the granting fee. Appellee Irvine's argument is therefore misplaced.

II. THE TRIAL COURT ERRED IN DENYING APPELLANTS' AN ACCOUNTING FOR PROFITS AND EXPENSES OF THE PROPERTY FROM THEIR COTENANTS.

Based on Appellants' position that the 1981 Deed conveyed to Ada Craig either a life estate or a joint tenancy, Appellants are entitled to an accounting if they are deeded to have a joint tenancy interest.

III. THE TRIAL COURT ERRED IN APPOINTING APPELLEE IRVINE AS RECEIVER OF THE PROPERTY.

Appellants do not argue that the trial court erred in appointing a receiver; the Appellants argue that the trial court erred in appointing Mr. Irvine as receiver.

Appellee Irvine's arguments in support of his appointment as receiver are based upon his alleged qualifications, the equitable nature of receivership, and the discretionary powers of the trial court. However, Appellee Irvine's brief ignores the issue at hand, whether Utah R. Civ. P., Rule 66 (b) applies or not.

Appellee Irvine also argues that the question of his appointment as receiver is moot since the property has been sold. However, while acting under color of his appointment, Mr. Irvine collected rents, settled claims and otherwise acted in a capacity for which he had no legal right as receiver. Whether as receiver or joint tenant, Appellants are still entitled to an accounting for the Property from October 2004, the date of Appellee Irvine's alleged appointment, until the Property was sold.

Appellee Irvine's appointment as receiver for the Property should be overturned. Mr. Irvine should be ordered to account for the monies received while acting under guise of his receivership and to deliver to Appellants their share of the rents and profits.

CONCLUSION

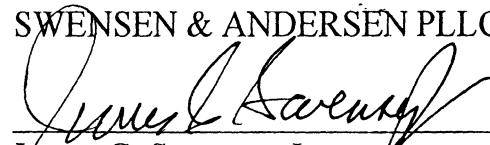
An exclusive life estate is a present estate and a joint tenancy interest is the concurrent ownership of a present estate. A life estate and a joint tenancy are interests which cannot exist simultaneously in the same property. Appellants have demonstrated that statute, case law and commentary lead to a reconciliation of the two interests with a finding that Ada Craig's interest in the Property resulting from the 1981 Deed was solely a life estate. Appellants ask this Court to reverse the trial court's finding that the 1981 Deed created both a life estate and a joint tenancy interest in Ada Craig and to reverse the trial court's ruling that Appellee Irvine is entitled to a 1/3 interest in the Property. Appellants ask this Court to find that the 1981 Deed created only a life estate in Ada Craig and upon her death, her life estate terminated and the Property vested in Appellants as remaindermen.

If this Court finds that Ada Craig retained some interest in the Property by the 1981 Deed which extended beyond her lifetime, then Appellants ask this Court to find that under the principles of merger Ada Craig's life estate was extinguished and that Appellants are entitled to an accounting for their interest in the Property from the date of the 1981 Deed. In this case, the matter should be remanded to the trial court for additional findings relating to an accounting for the Property.

Utah R. Civ. Proc., Rule 66(b) bars Appellee Irvine from being the receiver of the Property and Appellants ask this Court to reverse the trial court's appointment of Appellee Irvine as receiver of the Property and to order Appellee Irvine to account for his management of the Property under color of his appointment.

DATED: November 21, 2005.

SWENSEN & ANDERSEN PLLC

A handwritten signature in black ink, appearing to read "James G. Swensen, Jr.", written over a horizontal line.

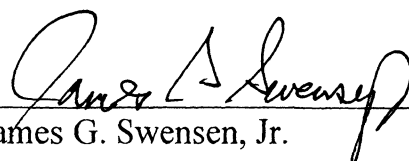
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CERTIFICATE OF SERVICE

I certify that on November 21, 2005, I caused a true and correct copy of the foregoing BRIEF OF APPELLANT to be mailed, postage prepaid, to:

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